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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,983	06/14/2001	Isaac K. Elliott	VON96046C1	6036
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PATENT MANAGEMENT GROUP			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@verizon.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/879,983	ELLIOTT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Man Phan	2419	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 October 2008.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-11 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

***Response to Amendment and Argument***

1. This communication is in response to applicant's 10/03/2008 Amendment in the application of Elliott et al. for a "System and method for providing requested quality of service in a hybrid network" filed 06/14/2001. This application is a continuation of US Application 08/751,917 filed November 18, 1996 is now US Patent# 6,335,927. The amendment and response has been entered and made of record. Claims 1-11 are pending in the application.
2. Applicant's remarks and argument to the rejected claims are insufficient to distinguish the claimed invention from the cited prior arts or overcome the rejection of said claims under 35 U.S.C. 103 as discussed below. Applicant's argument with respect to the pending claims have been fully considered, but they are not persuasive for at least the following reasons.
3. In response to Applicant's argument that the reference does not teach or reasonably suggest the functionality upon which the Examiner relies for the rejection. The Examiner first emphasizes for the record that the claims employ a broader in scope than the Applicant's disclosure in all aspects. In addition, the Applicant has not argued any narrower interpretation of the claim limitations, nor amended the claims significantly enough to construe a narrower meaning to the limitations. Since the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is required to interpret the claim limitations in terms of their broadest reasonable interpretations while determining patentability of the disclosed invention. See MPEP 2111. In other words, the claims must be

given their broadest reasonable interpretation consistent with the specification and the interpretation that those skilled in the art would reach. See *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000), *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999), and *In re American Academy of Science Tech Center*, 2004 WL 1067528 (Fed. Cir. May 13, 2004). Any term that is not clearly defined in the specification must be given its plain meaning as understood by one of ordinary skill in the art. See MPEP 2111.01. See also *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989), *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003), *Brookhill-Wilk I, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir. 2003). The interpretation of the claims by their broadest reasonable interpretation reduces the possibility that, once the claims are issued, the claims are interpreted more broadly than justified. See *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). Also, limitations appearing in the specification but not recited in the claim are not read into the claim. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore, the failure to significantly narrow definition or scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims in parallel to the Applicant in the response and reiterates the need for the Applicant to distinctly define the claimed invention.

4. Applicant asserts that there is no motivation to combine the prior art as proposed in the office action, Aldred et al. (US#5,719,942) and Turock (US#6,243,373), i.e. In response, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some

reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). It must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 443, F.2d 1392; 170 USPQ 209 (CCPA 1971).

Since no substantial amendments have been made and the Applicant's arguments are not persuasive, the claims are drawn to the same invention and the text of the prior art rejection can be found in the previous Office Action. Therefore, the Examiner maintains that the references cited and applied in the last office actions for the rejection of the claims are maintained in this office action.

***Claim Rejections - 35 USC ' 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 1038 and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1, 5-8 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aldred et al. (US#5,719,942) in view of Turock (US#6,243,373).

Regarding claims 10-11, the references disclose a novel system and method for responding to requests for quality of services and reserving the resources to provide the requested services, according to the essential features of the claims. Aldred et al. (US#5,719,942) provides a communications system for transmitting and/or receiving data over a network, said communications system including means responsive to requests for a desired quality of service specifying at least two quality of service parameters, for determining whether or not the requested quality of service is available, characterized in that said determining means is responsive to quality of service requests specifying the desired quality of service as a logical expression involving two or more of said at least two quality of service parameters (*logic for responding to requests for QoS and reserving the resources to provide the requested services*). Typically the quality of service requests are received from applications intending to initiate data communications over said network. The determining means then compares the requested quality

of service parameters with the facilities provided by the communications link(s) available to the communications system. If a match is obtained, then the requested transmission can be accepted, otherwise it must be refused (See Flow chart 9h; Col. 1, lines 52 plus). Aldred further teaches in Fig. 9c depicts the scenario when a resource manager needs to negotiate with applications to determine what resources are available, in which the call manager determines whether or not application 2 can supply the resource. The determination is effected using a request.sub.--resource function call, raising a RESOURCE.sub.-- REQUEST event in application 2 (*request resources*). On return, application 2 indicates whether or not the resources are available (*allocating necessary resources*). Application 2 should now be prepared to release the resources (*releasing necessary resources*). When the call manager completes the processing of the outstanding RESOURCE.sub.-- CLAIM event from application 1, the resources are further transferred from the call manager to application 1 (*message sequence for releasing the resources allocated to a call on termination of the call*)(Col. 15, lines 65 plus).

Aldred et al. (US#5,719,942) does not disclose expressly the media communication over a hybrid network which includes a circuit switched network and a packet switched network. However, Aldred teaches a system and method for establishing a communication channel over a heterogeneous network between a source node and a destination node, in which a heterogeneous network that links between nodes have different characteristics (*hybrid network communications*). In the same field of endeavor, Turock (US#6,243,373) discloses (Fig 2-10 and col. 5, lines 17 to col. 15, lines 54) a plurality of gateways (Fig 2, Ref 206 and 216) and call router (Fig 5, Ref 512) which connects the switched communication network and the packet network having a logic (Fig 5, Ref 506) which transmits a query message which includes a call type of service to

the directory service (Fig 5, Ref 514) to obtain a plurality of gateways that match the predefined call service criteria including QOS "cost" and a gateway registration scheme "gateways registered in the database" (See col. 9, lines 1-25) and an identifier of the call to an associated IP address; ranging the selected gateways according the least cost routing; selecting a shortest path gateway for placing a telephone call and selecting a next one if the shortest one is not available (See col. 9, lines 26- 65).

Regarding claim 6, Aldred teaches the Quality of service information characterizes the communication capabilities of the link. For each link type the link selection order, and defaults for the quality of service characteristics, are stored in the configuration profile (*profile information associated with a caller for communications*). The quality of service profile contains the necessary information for the support system to decide whether and how compression and encryption should be used. The value in the profile entry is used to fill in the fields of a launch call, which is then executed (*profile information of the caller is used in establishing media communications*).

Regarding claims 1 and 7-8, they are method claims corresponding to the system claims 10-11 above. Therefore, claims 1, 7-8 are analyzed and rejected as previously discussed with respect to claims 10-11.

One skilled in the art would have recognized the need for effectively and efficiently providing requested quality of service routing in networks, and would have applied Turock's novel use of internet telephone system utilizing the quality of the voice into Aldred' logic for responding to request for quality of service parameters in network communications. Therefore, It would have been obvious to a person of ordinary skill in the art at the time of the invention

was made to apply Turock's method and apparatus for implementing a computer network/internet telephone system into Aldred et al.'s system and method for establishing a communication channel over a heterogeneous network a source node and s destination node with the motivation being to provide a system and method for providing requested quality of service in a hybrid network.

8. Claims 2-5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aldred et al. (US#5,719,942) in view of Turock (US#6,243,373) as applied to the claims above, and further in view of Ronen et al. (US#5,905,736).

With respect to claims 2, 9, Aldred et al. (US#5,719,942) and Turock (US#6,243,373) disclose the claimed limitations discussed in paragraph 5 above. However, these claims differ from the claims above in that the claims require the bill detail record including an entry indicative of the requested QoS. In the same field of endeavor, Ronen et al. (US#5,905,736) disclose in fig. 1 a block diagram illustrated the network elements for providing the centralized billing functionality for transactions conducted by a user through an Internet Access Provider, in which upon connection of the user's terminal (101) to the IAP, the IAP transmits to a billing platform (108) a message that associates the user's identity and the temporary Internet Protocol (IP) address that is assigned by the IAP to the user's session for use by to that user's terminal. In response to a chargeable transaction with an ISP, the ISP transmits to the billing platform the IP address of the user making the transaction and the charge for the transaction. The charges for all such transactions are accumulated by a transaction server (109) and stored in an account on an associated database (110) identified with the IP address of the requesting terminal (*bill detail*

*record with requested QoS*). At the end of the user's session, the charges for all the transactions during the session that are stored on the transaction server database in the account identified with the IP address, are charged to an account associated with the user's identity that is stored on a database (112) of a billing server (111) by cross-referencing the IP address to the user's identity from the previously received and stored message (See also Fig. 3; Col. 4, lines 3 plus and Col. 7, lines 52 plus).

With respect to claims 3-5, Aldred further teaches in table 1 illustrated a record of the availability of communication resources that kept and managed by the support system at each node. Upon receiving a request for particular resources, the above record is consulted and a determination is made therefrom as to whether the request can be supported. If the request can be supported, the record is updated to reflect the fact that particular resources have been allocated and are no longer available for the duration of an such allocation. Such a record can be realised using any appropriate data structure (*table data entry indicative of the media communications*). Details identifying the true nature of the communicating device are made available in the user information field.

One skilled in the art would have recognized the need for effectively and efficiently providing requested quality of service routing in networks, and would have applied Ronen's teaching of the billing detail record and Turock's novel use of internet telephone system utilizing the quality of the voice into Aldred' logic for responding to request for quality of service parameters in network communications. Therefore, It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to apply Ronen's method for the billing of transaction over the internet, and Turock's method and apparatus for implementing a

computer network/ internet telephone system into Aldred et al.'s system and method for establishing a communication channel over a heterogeneous network a source node and destination node with the motivation being to provide a system and method for providing requested quality of service in a hybrid network.

9. **THIS ACTION THIS ACTION IS MADE FINAL.** See MPEP ' 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Phan whose telephone number is (571) 272-3149. The examiner can normally be reached on Mon - Fri from 6:00 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel, can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at toll free 1-866-217-9197.

Mphan

Dec. 30, 2008

/Man Phan/

Primary Examiner, Art Unit 2419

<b>Application Number</b> 	Application/Control No.	Applicant(s)/Patent under Reexamination
	09/879,983	ELLIOTT ET AL.
Examiner	Art Unit	
Man Phan	2419	